

Receipt number AUSFCC-6179272

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**HYDRAULICS INTERNATIONAL, INC.**

**Plaintiff,**

**v.**

**THE UNITED STATES OF AMERICA,**

**Defendant.**

No. 20-598 C

**COMPLAINT**

Plaintiff Hydraulics International, Inc. (“HII”), pursuant to the Contract Disputes Act (“CDA”), brings this action against Defendant the United States of America and, for its Complaint, alleges as follows:

**NATURE OF THE ACTION**

1. HII appeals the contracting officer’s May 31, 2019 final decision, denying HII’s claim for amounts owed under Contract No. FA8531-15-D-0004 (the “Contract”). HII seeks a money judgment for amounts owed under CLIN 0005 of the Contract, plus interest according to law.

**JURISDICTION**

2. This Court has jurisdiction over the subject matter of this Complaint pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1), and the CDA.

### **THE PARTIES**

3. HII is a California corporation. Its principal place of business is in Chatsworth, California.

4. Defendant the United States of America, for all purposes relevant hereto, acted by and through the Department of the Air Force, Air Force Life Cycle Management Center (the “Agency”), located at the Robins Air Force Base in Georgia.

### **FACTUAL BACKGROUND**

5. This appeal involves lift trucks the Agency uses to load, transport and unload weaponries and other cargo. These lift trucks are often referred to as “bomb loaders.” An example is depicted below:



6. The model for these lift trucks is “MJ-1” followed by a letter indicating the generation. For example, the original version of lift truck, developed in the 1950’s, was the MJ-1A, followed by MJ-1B. The MJ-1C subsequently replaced the earlier generations.

7. Suppliers built each generation of lift truck on a build-to-print basis, using the 2-dimensional (2D) drawings the Agency supplied them.

8. In 1985, HII began manufacturing both MJ-1Bs and MJ-1Cs, using 2D drawings from the Agency.

9. The MJ-1A, MJ-1B and MJ-1C were all powered by diesel engines, which emit exhaust that can cause respiratory distress and other issues, particularly when used in enclosed spaces such as warehouses or hangars.

10. HII developed an electric lift truck to be used indoors without the exhaust problems. HII decided to name this generation of lift truck the MJ-1E, for “electric.”

11. HII designed and developed the MJ-1E at its own cost. The MJ-1E performs the same tasks as the earlier generations and has many of the same parts. The primary difference is that the MJ-1E is powered by electricity, rather than diesel fuel.

12. The Agency began purchasing MJ-1Es from HII in 2009.

13. The Agency awarded HII the Contract on September 19, 2015. The Contract required HII to manufacture and supply 62 MJ-1Es, along with certain engineering data, including a Technical Data Package (“TDP”).

14. HII delivered the TDP in 2017, and it included, among other things, 2D drawings of the MJ-1E.

15. On August 2, 2017, the Agency rejected the TDP because, in its view, the Contract required HII to deliver 3-Dimensional (“3D”) models. HII responded to the Agency and insisted that the TDP it delivered met the Contract’s requirements.

16. On September 18, 2018, the Agency issued a final decision on its own claim, determining that (i) the Contract required HII to deliver 3D models; (ii) HII breached the Contract by refusing to deliver 3D models; and (iii) the Agency was entitled to withhold \$633,000.00 from HII, representing the amount the contracting officer determined it would cost to create 3D models (the “Agency’s Claim”).<sup>1</sup>

17. The monies withheld pursuant to the Agency’s Claim were tied to CLIN 0005.

18. At the time of the Agency’s Claim, the Agency owed HII a total of \$2,217,846.52 under the Contract. Even after the \$633,000.00 deduction for the Agency’s Claim, HII was owed \$784,753.31 under CLIN 0005, as well as \$800,093.21 for seven MJ-1Es that HII manufactured. However, the Agency refused to accept delivery of these lift trucks, or pay for them.

19. On January 18, 2019, HII submitted a certified claim: (a) asking that the Agency take delivery of the seven MJ-1Es scheduled for delivery under the Contract; (b) demanding payment in the amount of \$800,093.21 for those seven units; (c) demanding payment of \$101,968.37 for the costs HII incurred to service and store the seven MJ-1Es after the Agency refused to accept their delivery; and (d) demanding payment of the remaining \$784,753.31 owed under CLIN 0005. A copy of HII’s certified claim is included in Appendix A hereto.

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<sup>1</sup> HII appealed the contracting officer’s decision on the Agency Claim to this Court, which is pending as Case No. 19-105C.

20. HII worked directly with the Agency to resolve the issues raised in its certified claim. In February of 2019, the Agency accepted delivery of the seven MJ-1Es, and paid HII accordingly. In return, HII waived its claim for storage and service costs.

21. On May 31, 2019, the Agency's contracting officer issued her final decision denying HII's certified claim. A true and correct copy of the final decision is included in Appendix A hereto.

22. The contracting officer's final decision listed a number of purported deficiencies in the TDP. Since receipt of the final decision, HII has worked diligently with the Agency to remedy these purported deficiencies so that it could receive payment of the balance of CLIN 0005.

23. HII has provided a complete TDP, in accordance with the Contract's requirements, and has complied with all of the Agency's requests and instructions.

24. The Agency refuses to pay the balance of CLIN 0005.

### **COUNT I - - BREACH OF CONTRACT**

25. HII adopts and incorporates by reference the averments of the preceding paragraphs, as if fully set forth herein.

26. HII satisfied its obligations under the Contract by delivering the required M1-JEs and the TDP with 2D drawings. Accordingly, HII is entitled to be paid the Contract price.

27. Setting aside the parties' dispute over 3D models, which will be resolved as part of the pending appeal, the Agency had absolutely no basis to withhold additional monies under

CLIN 0005. The Agency's Claim liquidated its alleged damages for the 3D models at \$633,000.00, and provided no basis for withholding more than that amount. As such, the Agency has breached the Contract.

28. Even if a factual basis for additional withholding existed - it does not - the Agency's withholdings under CLIN 0005 nonetheless violate the Contract. DFARS 252.227-7030, "Technical Data – Withholding of Payment" was incorporated into the Contract. That clause limits the Agency's right to withhold amounts due under the Contract to 10% of the Contract price. By withholding the full amount owed under CLIN 0005, the Agency has exceeded that limit and breached the Contract.

29. HII has been damaged as a proximate consequence of the Agency's breach.

**PRAYER FOR RELIEF**

WHEREFORE, HII requests that this Court enter judgment in HII's favor, in the amount of \$784,753.3, plus interest, and award it such other and further relief as the Court deems just and proper.

Dated: May 13, 2020.

Respectfully submitted,

/s/ W. Brad English

W. Brad English

Emily J. Chancey

**OF COUNSEL:**

MAYNARD, COOPER & GALE, P.C.

655 Gallatin Street

Huntsville, Alabama 35801

Telephone: (256) 551-0171

Email: benglish@maynardcooper.com

## Appendix A





**HYDRAULICS INTERNATIONAL, INC.**  
9201 Independence Avenue  
Chatsworth, California USA 91311-6178  
Telephone: (818) 998-1231  
Fax: (818) 718-6459  
www.hiinet.com

January 18, 2019

**VIA EMAIL AND USPS EXPRESS MAIL**

Ms. Shea Hart  
Contracting Officer – MJ-1E Project  
United States Air Force  
Robins Air Force Base  
AFLCMC/WNKAAB, Building 300  
235 Byron Street, Suite 19A  
Robins AFB, GA 31098-1670  
Shea.hart@us.af.mil

**Subject: Certified Claim under Contract No. FA8532-15-D-0004 (the “Contract”)**

**References: Memorandum to Gary DiDomenico, dated February 21, 2018  
Memorandum for Hydraulics International, Inc., dated February 21, 2018  
Letter to Shea Hart, dated March 2, 2018  
Memorandum, dated June 13, 2018  
Letter to Shea Hart, dated June 19, 2018  
Letter to Shea Hart, dated August 2, 2018  
Memorandum for Hydraulics International, Inc., dated August 27, 2018  
Letter to Shea Hart, dated September 4, 2018  
Letter to Shea Hart, dated September 10, 2018  
Contracting Officer’s Final Determination, dated September 18, 2018**

**Attachments: Invoice Nos. 0000067968, 0000067970-0000067973, 0000068359, 0000068360  
and 00000172567**

Dear Ms. Hart:

Pursuant to 41 U.S.C. § 7101, et seq., Hydraulics International, Inc. (“HII”) files this certified claim against the Department of the Air Force, Air Force Life Cycle Management Center (the “Agency”). This claim alleges that the Agency has breached the contract by unjustifiably refusing to (i) pay \$784,753.31 owed under CLIN 0005; and (ii) accept delivery of and remit payment for seven MJ-1Es HII tendered to the Agency on June 13, 2018.

Ms. Shea Hart  
 January 18, 2019  
 Page 2

## **I. Refusal to Pay Amounts Owed Under CLIN 0005**

CLIN 0005, titled “Product Drawings/Models and Associated Lists,” relates to the Technical Data Package (“TDP”) to be delivered under the Contract. On January 3, 2018, HII submitted its TDP to the Agency. As discussed in the referenced correspondence, HII and the Agency disagree on the required content of the TDP. Specifically, the Agency contends that the Contract required HII to supply 3-dimensional (“3D”) models of the MJ-1E lift truck (“MJ-1E”). HII contends that its TDP, which included 2-dimensional (“2D”) drawings, satisfied all Contract requirements. In its Contracting Officer’s Final Decision, dated September 18, 2018, the Agency notified HII that the Agency would withhold \$633,000.00 from CLIN 0005, which is the amount the Agency calculated would be required to procure 3D models of the MJ-1E.<sup>1</sup>

The total amount owed under CLIN 0005 is \$1,417,753.31. As the Agency has addressed to its apparent satisfaction HII’s refusal to provide 3D models of the MJ-1E, there is no reason for the Agency to retain the balance owed under CLIN 0005.<sup>2</sup> The Agency has breached the Contract by retaining the balance owed. HII requests that the Agency remit payment in the amount of \$784,753.31<sup>3</sup> to HII. HII’s entitlement to the remaining \$633,000.00 will be determined by the courts.

## **II. Refusal to Accept Delivery of and Remit Payment for Seven MJ-1Es**

The seven MJ-1Es at issue in this claim are the final seven of 62 total MJ-1Es ordered under the Contract. The Agency has not taken issue with the quality or performance of any of the 55 previously delivered MJ-1Es, nor has the Agency disputed that the remaining seven MJ-1Es meet the Contract’s specifications. Nevertheless, the Agency has refused to accept delivery of these seven MJ-1Es, which has prevented HII from invoicing the Agency and receiving payment for those items.

Per the referenced correspondence, HII understands that the Agency’s sole basis for refusing to accept delivery of the remaining seven MJ-1Es is the parties’ disagreement over the required type of HII’s TDP. The existence of this dispute does not excuse the Agency from accepting delivery of the final seven MJ-1Es. As aforesaid, the Agency has already addressed its

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<sup>1</sup> As described above and in the referenced correspondence, HII disagrees with the Agency’s interpretation of the Contract’s requirements with respect to the TDP, and will appeal the September 18, 2018 Contracting Officer’s Final Decision to the Court of Federal Claims. The instant claim is not directed to that dispute, but to the balance of the amount owed under the Contract.

<sup>2</sup> Even if the Agency had not already liquidated its purported damages, pursuant to DFARS 252.227-7030, “Technical Data – Withholding of Payment,” the maximum amount the Agency could withhold from HII is 10% of the total contract price of \$8,835,210.45, or \$883,521.05. The Agency has withheld the full amount owed under CLIN 0005, (\$1,417,753.31), which is \$534,232.26 more than DFARS 252.227-7030, “Technical Data – Withholding of Payment” permits.

<sup>3</sup> \$1,417,753.31 - \$633,000.00 = \$784,753.31.

Ms. Shea Hart  
 January 18, 2019  
 Page 3

issues with HII's TDP in its September 18, 2018 final decision. Furthermore, the TDP is a separate deliverable under the Contract, and its content has no bearing on the quality or conformance of the MJ-1Es (55 of which the Agency has already accepted).

HII has fulfilled its obligations under the Contract by manufacturing the final seven MJ-1Es ordered by the Agency. The Agency, however, has breached its obligations under the Contract by refusing to accept delivery of these items and remit payment to HII. *See Sinclair Coal Co. v. United States*, 65 Ct. Cl. 704, 711 (1928). Due to the Agency's breach, HII is entitled to recover damages that would place it in as good a position as it would have been, had the Agency performed its obligations under the Contract. *See North Star Alaska Housing Corp v. United States*, 76 Fed. Cl. 158, 212 (2007). HII's damages associated with the Agency's refusal to accept delivery of and remit payment for the seven MJ-1E units are \$960,301.58, broken down as follows:

Contract Price for seven MJ-1E units (\$114,299.03 ea)	\$800,093.21
Storage Fees for seven MJ-1E units (June 13, 2018 to January 13, 2019 @ \$624.69 per unit per month)	\$30,609.88
Service Fees for seven MJ-1E units (June 13, 2018 to January 13, 2019 8 hours per unit per month @ \$104/hour)	\$40,768.00
Storage fees for seven MJ-1E units (January 13, 2019 to April 13, 2019 <sup>4</sup> @ \$624.69 per unit per month)	\$13,118.49
Service Fees for seven MJ-1E units (January 13, 2019 to April 13, 2019 8 hours per unit per month @ \$104/hour)	\$17,472.00

Based on the foregoing, HII requests that the Agency accept delivery of the final seven MJ-1Es and remit to HII the amount of \$902,061.51.<sup>5</sup>

### III. Conclusion

In conclusion, HII requests that the Agency:

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<sup>4</sup> Storage fees and service fees will continue to be incurred so long as the remaining seven MJ-1Es remain in HII's possession.

<sup>5</sup> In the event that a final decision is not rendered in HII's favor, or the items are not accepted by the Agency on or before April 13, 2019, storage fees and service fees will continue to accrue at the aggregate rate of \$339.89 per day.

Ms. Shea Hart  
January 18, 2019  
Page 4

- A. Remit payment in the amount of \$784,753.31<sup>6</sup> under CLIN 0005;
- B. Accept delivery of the remaining seven MJ-1Es manufactured by HII; and
- C. Remit payment in the amount of \$902,061.51 for the seven MJ-1Es, together with storage costs and service fees through April 13, 2019.

We respectfully request that the Agency issue a final decision on HII's claim within sixty (60) days.

Respectfully Submitted,

  
Jeff Riley  
Vice President of Sales

[Certification to Claim Asserted by  
HYDRAULICS INTERNATIONAL, INC. to  
DEPARTMENT OF THE AIR FORCE,  
AIR FORCE LIFE CYCLE MANAGEMENT CENTER]

I hereby certify that this claim is made in good faith; the supporting data are accurate and complete to the best of my knowledge and belief; the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and that I am authorized to certify the claim on behalf of the contractor.

**HYDRAULICS INTERNATIONAL, INC.**

By:   
Name: Jeff Riley  
Its: Vice President of Sales

Date: January 18, 2019

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<sup>6</sup> Again, HII will seek to recover the \$633,000.00 withheld from CLIN 0005 in its appeal of the Agency's September 18, 2018 final decision.



HYDRAULICS INTERNATIONAL, INC.  
9201 Independence Ave.  
Chatsworth, CA 91311  
Tel.: (818) 998-1231 Fax: (818) 718-2459

Invoice No 0000067968

Customer 011234

**Duplicate Copy**

Bill to :

DFAS-COLUMBUS CENTER  
WEST ENTITLEMENT OPERATIONS  
P.O. BOX 182381  
COLUMBUS OH 43218-2381  
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SUPPORT EQPT-FLIGHTLINE/BASE MAIN  
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Sales Order Phone (478)222-1954

Sales Order Fax (478)222-1854

Customer Phone (478)926-7851

Customer PO Number		Invoice Date	Terms	FOB	Ship Via	Salesperson
FA8532-17-F-0225		05/29/2018	NET 30	ORIGIN. MFG.PLANT	Best Wav	JR
Item No	Part / Rev / Description / Details	Quantity	Unit Price	Discount	Extended Price	
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Total Item Price	\$ 228,598.06
Shipping	\$ 0.00
Sales Tax	\$ 0.00
<b>Total Inv Price</b>	<b>\$ 228,598.06</b>
<b>Amount Paid</b>	<b>\$ 114,299.03</b>
<b>Total Due</b>	<b>\$ 114,299.03</b>

SHIPPED TO ADDRESS:  
SEE CONTRACT

Please pay balance due by Thursday June/28/2018.

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Sales Order Phone (478)222-1954

Sales Order Fax (478)222-1854

Customer Phone (478)926-7851

Customer PO Number		Invoice Date	Terms	FOB	Ship Via	Salesperson
FA8532-17-F-0225		05/29/2018	NET 30	ORIGIN, MFG.PLANT	Best Way	JR
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					Shipping	\$ 0.00
					Sales Tax	\$ 0.00
					<b>Total Inv Price</b>	<b>\$ 114,299.03</b>
SHIPPED TO ADDRESS: SEE CONTRACT  ** ***						
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Sales Order Phone (478)222-1954

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Customer PO Number	Invoice Date	Terms	FOB	Ship Via	Salesperson
FA8532-17-F-0225	05/29/2018	NET 30	ORIGIN. MFG.PLANT	Best Wav	JR
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				Shipping	\$ 0.00
				Sales Tax	\$ 0.00
				<b>Total Inv Price</b>	<b>\$ 114,299.03</b>
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Customer PO Number		Invoice Date	Terms	FOB	Ship Via	Salesperson
FA8532-17-F-0225		05/29/2018	NET 30	ORIGIN. MFG.PLANT	Best Way	JR
Item No	Part / Rev. / Description / Details	Quantity	Unit Price	Discount	Extended Price	
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					Sales Tax	\$ 0.00
					<b>Total Inv Price</b>	<b>\$ 114,299.03</b>
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Customer Phone (478)926-7851

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FA8532-17-F-0225		05/29/2018	NET 30	ORIGIN. MFG.PLANT	Best Wav	JR
Item No	Part / Rev / Description / Details	Quantity	Unit Price	Discount	Extended Price	
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					Sales Tax	\$ 0.00
					<b>Total Inv Price</b>	<b>\$ 114,299.03</b>
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Sales Order Fax (478)222-1854

Customer Phone (478)926-7851

Customer PO Number		Invoice Date	Terms	FOB	Ship Via	Salesperson
FA8532-17-F-0225		06/29/2018	NET 30	ORIGIN. MFG.PLANT	Best Wav	JR
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					Total Inv Price	\$ 114,299.03
SHIPPED TO ADDRESS: SEE CONTRACT						
Please pay balance due by Sunday July/29/2018.						

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HYDRAULICS INTERNATIONAL, INC.  
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Invoice No 0000068360

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Customer PO Number		Invoice Date	Terms	FOB	Ship Via	Salesperson
FA8532-17-F-0225		06/29/2018	NET 30	ORIGIN. MFG.PLANT	Best Wav	JR
Item No	Part / Rev / Description / Details	Quantity	Unit Price	Discount	Extended Price	
000010	091701-100 Rev 00 U/M EA MJ-1E AERIAL STORES LIFT TRUCK  ITEM NO. 1001AA QTY. 26  H110026Z, S/N 172567-091701-100-060 FE6303   Packing List No/Item No: 107252/000001 Sales Order No: 172567 Customer PO No: FA8532-17-F-0225	1.00000	114299.03000	0.00	\$ 114,299.03	
					Total Item Price	\$ 114,299.03
					Shipping	\$ 0.00
					Sales Tax	\$ 0.00
					Total Inv Price	\$ 114,299.03
SHIPPED TO ADDRESS: SEE CONTRACT						
** *** **						
Please pay balance due by Sunday July/29/2018.						

CUSTOMER COPY

Page 1 of 1

Authorized Signature



HYDRAULICS INTERNATIONAL, INC.  
9201 INDEPENDENCE AVE  
CHATSWORTH, CA 91311  
TEL: 818 998-1231  
FAX: 818 407-3418

INVOICE NO.: 00000172567

CUSTOMER : 011234

## Bill to:

DFAS-COLUMBUS CENTER  
WEST ENTITLEMENT OPERATIONS  
P.O. BOX 182381  
COLUMBUS OH 43218-2381  
USA

## Sold To :

SUPPORT EQPT-FLIGHTLINE/BASE MAIN  
AFLCMC/WNKBAB  
236 BYRON ST STE 19A  
BLDG 300 CML PHN 478 222 1903  
ROBINS AFB GA 31098-1670  
USA

Phone (478)222-1954

Sales Order No. 172567

Customer PO Number		Invoice Date	Terms	FOB	Ship Via	Sales Person
FA8532-17-F-0225		1/16/2019	DUE NOW	ORIGIN,MFG,PLANT	PICK UP BY CUSTOMER	RG
Item	Part/Rev/Description/Details			Quantity	Unit Price	Extended Price
000010	Monthly Sotage Fee Rev 000 U/M EA \$624.69 ea unit per month (7 X 624.69 = 4,372.84)			7.00000	4,372.84	30,609.88
000020	Monthly Service Fee Rev 000 U/M EA \$832.00 ea unit per month (7 X 832.00 = 5,824.00)			7.00000	5,824.00	40,768.00
					Total Item Price	71,377.88
					Shipping	0.00
					Sales Tax	0.00
					Total Inv Price	\$ 71,377.88

CUSTOMER COPY



**DEPARTMENT OF THE AIR FORCE**  
AIR FORCE LIFE CYCLE MANAGEMENT CENTER  
ROBINS AIR FORCE BASE GEORGIA

31 May 2019

MEMORANDUM TO: MR. JEFF RILEY  
HYDRAULICS INTERNATIONAL, INC.  
9201 INDEPENDENCE AVENUE  
CHATSWORTH CALIFORNIA 91311

FROM: SHEA HART  
CONTRACTING OFFICER

AFLCMC/WNKAA  
ROBINS AFB, GA 31098

SUBJECT: Contracting Officer Final Decision– Certified Claim dated 18 January 2019 under  
Contract No. FA8532-15-D-0004, Delivery Order 0001

Mr. Riley,

1. In a certified claim dated 18 January 2019, Hydraulics International, Inc. (HII) seeks one-million, six-hundred and eighty-six thousand, eight-hundred fourteen dollars and 82 cents (\$1,686,814.82) from the United States under contract number FA8532-15-D-0004, Delivery Order 0001. This contract order was placed by the Air Force on 18 September 2015. The original claim consisted of two parts. In an email dated 6 May 2019, HII withdrew the second part of its claim.
2. In the first part of the claim, HII claims that the Government is in breach of the above referenced contract by refusing to pay the balance owed on Contract Line Item Number (CLIN) 0005 – Product Drawings/Models and Associated Lists CDRL D001. HII further alleges the amount owed is \$784,753.31. CLIN 0005 is Firm Fixed Priced (FFP) requiring delivery of a completed and approved technical data package in accordance with CDRL D001 and SOW paragraph 3.5.4.
3. In the claim, HII asserts that “As the Agency has addressed to its apparent satisfaction HII’s refusal to provide 3D models of the MJ-1E, there is no reason for the Agency to retain the balance owed under CLIN 0005.” This statement is incorrect. When the claim was submitted, the Air Force, excluding the dispute regarding 3D models, had not completed the review or accepted the CLIN 0005 technical data package (TDP) from HII. Payment is, per the terms of the contract, dependent upon such receipt and acceptance. The contract and Statement of Work state:

*Clause 52.232-1 – Payments, the Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.*

*SOW: Paragraph 3.5.4 Engineering Data - The contractor shall develop/produce/maintain and deliver a Technical Data Package (TDP) that accurately depicts the final product. The TDP shall be delivered in accordance with Air Force Product Data Specification Drawing No. 9579776 Revision L (CAGE 98752), reference attached DD Form 1423 Block 16. [DISESS-81000].*

HII submitted the CLIN 0005 technical data package for a 100% review on 16 Aug 2018. The Government reviewed the package, rejected the IDP and identified the following required corrections:

*“The IPR shall be conducted only after the contractor's quality assurance personnel have completely reviewed the data and determined that data are of sufficient quality that Government time will be effectively utilized during the review.”*

*ECO's referenced by engineering drawings were not furnished as required per Air Force document 9626025, paragraph 4.1*

*ECO's are not noted on the Metadata spreadsheet as required per Air Force document 9579776 Rev. L, paragraph 10.*

*The 4 representative samples per Air Force document 9579776 Rev. L, paragraph 4 were not furnished.*

*3D CAD models per Air Force document 9579776 Revision L, paragraph 7 & 7c in the native, neutral and viewable software format are missing.*

*Drawing identified as 091701-100\_1.dwg, find number 2 Nomenclature is misspelled, the word  
INSTALATION should be INSTALLATION.*

*The drawing identified as 201644926 is missing referenced drawing 000738-726 and accompanying software.*

4. The package was rejected on 5 Sep 2018. In accordance with Delivery Order FA8532-15-D-00040001, Modification 03, HII had 60 days to resubmit the package. As of 18 Jan 2019, the date this claim was submitted, HII had failed to resubmit the package.
5. However, Mr. Gary DiDomenico provided correspondence on 22 Feb 2019 wherein he stated that the resubmit for CLIN 0005 TDP was sent on 24 Jan 2019. With this information, we discovered that the Air Force had received the resubmitted CLIN 0005 TDP on 24 Jan 2019. However, HII had not correctly labeled the email to identify it as the CLIN 0005 TDP. The email HII sent on 24 Jan 2019 listed “Subject: “Provisioning Drawings” and the body of the

email identified “*provisioning drawings.*” This misleading identification resulted in the package being thought to be associated with CLIN 0006, *PROVISIONING DATA*, instead of CLIN 0005, *PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS (D001)*. The mislabeling, therefore, resulted in the data package being incorrectly delivered to the provisioning team rather than the engineering team. Fortunately, based upon the new information regarding the TDP resubmittal, the engineer team finally received CLIN 0005 TDP on 4 Mar 2019.

6. The government engineer completed the review, and on 9 Apr 2019, HII was notified that the review of the resubmitted CLIN 0005 TDP was an incomplete data submittal and was rejected. The Government identified the following required corrections in its review of the TDP:

*ECO’s referenced by engineering drawings were not furnished with the final submittal per Air Force document 9626025, paragraph 4.1*

*The 4 representative samples per Air Force document 9579776 Rev. L, paragraph 4 were not furnished.*

*The drawing identified as 201644926 is missing referenced drawing 000738-726 and accompanying software.*

*The drawing identified as 201644932, General note 4 should have spacing between the words “CONTINUED” AND “AVAILABILITY”.*

*The following drawings have insufficient spacing between “Bend Radius” and the identifying letter “F”.*

*The drawing identified as 201644338, flag note 3 “98752ASSY201644338-01” should be “98752-201644338-01” since this part is not an assembly.*

*The drawing identified as 56E23557\_Z, Revision “Z” is not allowed per ASME Y14.35, section 5.1. The new Revision should be “AA”.*

*The metadata spreadsheet “File Category” column does not contain the appropriate category descriptions per A/F document 9579776\_L, section 10, sheet 20. “Enter the specific product data file format with version, e.g., HP 7586, TIFF Group 4, RS-274X, AutoCAD 2000, STEP AP203, CATIA V5.0, EDIF 400 Schematic, Intel Hex-32, etc. No version needs to appear for DXF or JT files since many conversion programs do not specify the versioning.”*

7. The rejection letter was sent on 9 Apr 2019 identifying the deficiencies listed above and notice was sent to HII to submit the corrected TDP for review by close of business 9 Jun 2019. HII resubmitted the TDP on 17 May 2019. A government engineer reviewed the TDP, and it was determined to be incomplete and was rejected. The PCO sent the TDP Rejected Notice to HII on 29 May 2019 with the following deficiencies and instructions:

*(Global) The delivered “view only” PDF files are not word searchable per the “Air Force Product Data Specification” drawing 9579776 Revision L, paragraph 7b (CAD/CAM Product Definition Data) and A/F document 9626025 Rev F, paragraph 15.1 (Government CAGE 2D Drawings).*

*The required “Digital Data Delivery (Sample)” was not delivered per the “Air Force Product Data Specification” drawing 9579776 Revision L, paragraph 4, (Previously noted in the February 16, 2018 review.)*

*Drawing identified as 201644926 is missing referenced drawing 000738-726, cage 2N386 and any accompanying software as noted in flag note 3. Reference Air Force document 9579776, Rev. L, paragraph 9. (Previously noted in the February 16, 2018 review.)*

*Drawing identified as 201644959 is missing referenced drawing 000738-759, cage 2N386 and any accompanying software as noted in general note 3. Reference Air Force document 9579776, Rev. L, paragraph 9. (Previously noted in the February 16, 2018 review.)*

*Government is requesting that HII resubmit the 100% Technical Data Package in its entirety for review. The submission should include all the corrections of the above mentioned discrepancies as well as all past discrepancies. This request excludes the 3D modeling requirement which is the subject of pending litigation. Please submit the TDP by close of business 29 May 2019. If you are not able to resubmit by this time, please notify me as well as the Contracting Officer and the Contract Specialist in writing.*

8. On 30 May 2019, HII and the government IPT team met to discuss and clarify the deficiencies. HII indicated that it will resubmit a complete 100% TDP with corrections and/or identify and justify deficiencies that cannot be met. HII requested three weeks to make changes. HII will resubmit the TDP on 20 June 2019. The government engineers will require 30-45 days to review the resubmitted TDP. Payment depends on the resubmittal and the government review and acceptance of the TDP. With HII working to resubmit the TDP, there is not currently a material dispute or issue in controversy. HII is still performing within the terms of the contract and payment by the Government for this delivery is pending an acceptable submittal.
9. After re-submittal and the engineering review is complete and the TDP is found to meet the criteria established by Air Force for approval, payment pursuant to the contract shall be considered. Until that time, payment will not be considered and this portion of your claim is denied in full as there is no issue in controversy or material dispute.
10. In its 18 January 2019 certified claim, HII also claimed \$902,061.51 for the final 7 undelivered assets, storage costs, and service fees. Of this amount, HII claimed that it was owed \$800,093.21 for the seven assets. As of 13 Feb 2019, as validated by DCMA, the 7 units have shipped, been accepted, and payment to HII has been made in the amount of



\$800,093.21. Because full payment has been made for the assets pursuant to the contract, this portion of your claim is now moot and is, therefore, denied in full.

11. In its initial claim, HII is claimed \$30,609.88 for storage fees for the period 13 Jun 2018 to 13 Jan 2019 and \$13,118.49 for storage fees for the period 13 Jan 2019 to 13 Apr 2019. HII claimed \$40,768.00 for service fees for the period 13 Jun 2018 to 13 Jan 2019 and \$17,472.00 for service fees for the period 13 Jan 2019 to 13 Apr 2019. On 29 April 2019, the government requested that HII provide documentation that substantiates the cost incurred for the storage and services.
12. On 06 May 2019, HII withdrew its claim for the storage fees and service fees of \$101,968.37, and for 7 assets \$800,093.21 due to the fact that the remaining units are accepted, paid, and shipped. HII stated that *“they will no longer be pursuing Claim II under our Certified Claim (submitted on 1/18/19) for “refusal to accept delivery of and remit payment for seven MJ-1Es” along with storage/service/maintenance costs.”* (Email from Gary DiDomenico to Shea Hart, Subject: [Non-DoD Source] Storage and Service Cost Data MJ-1E, dated May 06, 2019). For this reason, the claim for storage cost and services fees concerning the 7 undelivered assets and payment for the previously undelivered 7 assets, for total of \$902,061.51, is resolved. Therefore, this portion of your claim is denied in full.
13. **For the above stated reasons, your claim submitted in the amount of one-million, six-hundred and eighty-six thousand, eight-hundred fourteen dollars and 82 cents (\$1,686,814.82) is denied in full.**
14. This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number.
15. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board’s—
  - (1) Small claim procedure for claims of \$50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), \$150,000 or less; or
  - (2) Accelerated procedure for claims of \$100,000 or less.
14. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in 41 U.S.C. 7102(d), regarding Maritime Contracts) within 12 months of the date you receive this decision.

HART.SHEA.E.1106744358 Digitally signed by  
HART.SHEA.E.1106744358  
Date: 2019.05.31 17:34:37  
-04'00'

SHEA E. HART  
Contracting Officer

cc: AFLOA/JAQ  
78 ABW/JA